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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SILICON LABS INTEGRATION, INC., a California corporation (formerly known as Integration Associates Incorporated), Plaintiff, v. SHMUEL MELMAN, Defendant.	C-08-04030 RMW ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS **[Re Docket No. 18]**

Plaintiff Silicon Labs Integration, Inc. ("SLI") seeks a declaration that it (formerly Integration Associates Inc. ("IA")) has no obligation or liability, contractual or otherwise, to defendant Shmuel Melman ("Melman") for payment for any compensation related to services rendered to IA in connection with Silicon Labs, Inc.'s ("Silicon Labs") acquisition of IA in July of 2008. SLI also brings a claim against Melman for allegedly interfering with SLI's prospective economic advantage. Melman moves to dismiss the complaint on the bases that: (1) this court lacks personal jurisdiction over Melman; (2) SLI's declaratory judgment claim involves a misuse of the Declaratory Judgment Act; (3) the doctrine of *forum non conveniens* precludes going forward in this

court; and (4) SLI's intentional interference with prospective economic advantage claim fails to state a claim upon which relief can be granted. For the reasons stated below, the motion to dismiss is denied on grounds (1) - (3) and is granted on ground (4). SLI is given twenty days leave to amend.

I. BACKGROUND

SLI is a California corporation that designs and manufactures semiconductors for radio frequency, infrared, modem, and power management applications. Complaint ¶ 8. Before the events that form the basis for this suit, SLI was known as IA. Melman is the Chief Executive Officer of Crow Electronic Engineering ("Crow"), an Israeli corporation that manufactures electronic security systems. *Id.* at ¶ 7. Crow purchases and utilizes the semiconductor products of IA and Silicon Labs, which is based in Austin, Texas, in its security systems. *Id.*

On June 24, 2008, Silicon Labs announced that it would acquire IA for $80 million. After the agreement closed, the two companies became known as SLI. At issue in this case is whether a brokerage or finder's commission agreement existed between IA and Melman. Melman claims that IA agreed to compensate him for finding a suitable company to acquire IA. *Id.* at ¶ 10. Melman further claims that he met with representatives from Silicon Labs in Israel in March of 2008, and encouraged Silicon Labs to consider acquiring IA and its technology. Decl. of Shmuel Melman ¶ 14.

Once the acquisition closed, Melman contacted SLI regarding the commission to which he contends he was entitled. Complaint ¶ 10. On August 19, 2008, Melman met with Kurt Hoff, Silicon Labs Vice President of Worldwide Sales, without success regarding his claims. Melman Decl. ¶ 30. On August 22, 2008, the instant complaint was filed.

II. ANALYSIS

A. Personal Jurisdiction

For a federal court to exercise personal jurisdiction over a nonresident in a diversity of citizenship case, the proposed subject of jurisdiction must satisfy both the applicable personal-jurisdiction rule of the forum state and constitutional principles of due process. *Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990) (citing *Data Disc, Inc. v. Systems Tech Assoc.*, 557 F.2d 1280, 1286 (9th Cir. 1977)). California's personal-jurisdiction rule states that "a court of this state may exercise

jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Cal.Code.Civ. Pro. § 410.10. The state and federal constitutions are coextensive with respect to jurisdiction, so jurisdiction is constrained only by the United States Constitution. *Data Disc*, 557 F.2d at 1286, n.3. A court may exercise either general or specific jurisdiction over a non-resident defendant. *Sher*, 911 F.2d at 1361. SLI concedes that it cannot establish general jurisdiction over Melman without further jurisdictional discovery. *See* Pl.'s Opp. to Mot. to Dismiss 5 n.1. In order to exercise specific personal jurisdiction over a nonresident defendant, the Ninth Circuit requires that:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008). The plaintiff bears the burden on the first two prongs of this test. *Id.* Once the plaintiff has established both of these, the defendant, to avoid the exercise of jurisdiction, must come forward with a "compelling case that exercising jurisdiction would be unreasonable." *Id.* But if the plaintiff fails at the first step, the jurisdictional inquiry ends and the case must be dismissed. *Id.* In the absence of an evidentiary hearing, these burdens are satisfied upon a prima facie showing of jurisdictional facts. *Sher*, 911 F.3d at 1361.

1. SLI's Declaratory Judgment Claim

The two disjunctive parts of the first prong, though frequently referred to collectively as "purposeful availment" are distinctive concepts often applied separately to tort and contract cases, respectively. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2003). That is, a purposeful availment analysis is most often used in suits sounding in contract. *Id.* And a purposeful direction analysis is most often used in suits sounding in tort. *Id.* The court will consider purposeful availment for SLI's declaratory judgment claim.

a. Purposeful Availment

To have purposely availed himself of the privilege of conducting activities in the forum, Melman must have "performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state." *Sher*, 911 F.2d at 1362. However, "the mere existence of a contract with a party does not constitute sufficient minimum contacts for jurisdiction." *Id.* (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 478 (1985)). Instead, the court must look to "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties actual course of dealing."

SLI has made a prima facie showing that Melman purposely availed himself of the privilege of conducting activities in California. Melman claims to have initiated discussion with Dr. Rafael Fried, the Senior Vice President and General Manager of IA's Wireless Division. IA was a company founded and located in Mountain View, California that sold wireless components, some of which were sold to Crow Electronics Engineering Ltd., an Israeli company of which Melman is the Chief Executive Officer. On or about February 28, 2008 Melman met with Fried in Israel to discuss IA's new technology. Melman claims he told Fried that he did not think that IA could survive independently very long and that Fried agreed.

On March 6, 2008 Melman says he spoke with Fried who was back at IA in Mountain View, California by telephone from Israel and "explained to him that [he] could find an appropriate acquirer or partner for IA." Melman decl. ¶ 10. Melman allegedly said he did not work for free and made it clear that he expected to be compensated for his efforts on behalf of IA. Fried allegedly accepted Melman's offer and assured Melman that he would be paid for his services. Melman, therefore, sought and agreed to perform a service for IA which would promote the transaction of business within California, namely the acquisition of IA which would enable it to survive.

Melman claims that after Fried agreed to pay him for his services, he spent considerable time and effort in Israel to understand IA's technology and locate a potential acquirer. Melman met in Israel with representatives of Silicon Labs, Silicon Labs' distributor in Israel, and an individual from Crow. In this and subsequent telephone conferences Melman promoted the acquisition of IA by Silicon Labs. However, although Melman's promotional activities were conducted from Israel, they involved communications with IA executives in California. Melman knew that to carry out his

alleged agreement to procure an acquiring company for IA, he would have to deal with business people governed by California's business and legal environment. In summary, Melman reached out to IA, a California company, to hire him to find an acquisition partner, Melman knew any acquisition agreement would involve at least one California company and have to be carried out in the California business and legal environment and would involve communications with at least IA's executives in California.

The circumstances here differ from those in *Sher* cited by Melman. In *Sher*, a California client sought and obtained a contract with a Florida law firm to represent him in a criminal case in Florida. The client sought to sue the firm for malpractice in California based upon the representation in Florida. The Court of Appeal held that the plaintiff's California residence combined with incidental telephone calls with the client and the acceptance by the firm of payment from a California bank were insufficient to support jurisdiction.[1] Here, unlike the situation in *Sher*, Melman sought the agreement from IA and his undertaking was to find a company to acquire the California company, IA. He was not working with a California resident to accomplish a business deal for a California company in connection with a specific transaction in Israel. Melman, therefore, by seeking and performing his undertaking on behalf of IA, a California company, purposefully availed himself of the California forum's protections.

b. Claim Arises Out of and Relates to Melman's Forum-Related Activities

SLI's claim arises out of or relates to Melman's forum-related activities. The declaratory relief action would not have been filed but for Melman's alleged oral agreement to procure an acquisition partner for IA. His forum-related contacts were all in relation to the alleged agreement and performance of it.

c. Specific Jurisdiction Over Melman Is Reasonable

Since SLI has made a prima facie showing on the first two prongs of specific jurisdiction, Melman must make a "compelling case that exercising jurisdiction would be unreasonable" to avoid

[1] The court did find jurisdiction over the firm based upon a deed of trust it took on California property to secure its fee.

the exercise of jurisdiction over him. *Boschetto*, 539 F.3d at 1016. This he has not done. The factors that need to balance significantly in his favor include: (i) the extent of the defendant's purposeful interjection into the forum state's affairs; (ii) the burden on the defendant of defending in the forum; (iii) the extent of conflict with the sovereignty of the defendant's home state; (iv) the forum state's interest in adjudicating the dispute; (v) the most efficient judicial resolution of the controversy; (vi) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (vii) the existence of an alternative forum. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1488 (9th Cir. 1993) (citation omitted). The only factor that appears to weigh in Melman's favor is the burden on him to defend here as opposed to in Israel. However, Melman does speak English, has a business that does business in the United States and travel and communication are not difficult in the modern world between business people in the two countries. Balanced against the burden of Melman having to litigate in California is the fact that he solicited the opportunity to locate an acquisition partner for a California company, in carrying out his undertaking he had to communicate with business people in California, and he had to understand and work with a California business. Melman's alleged success had a substantial impact on a California business—his success enabled IA to survive. It seems logical that California would have a greater interest in the effect of Melman's service (the alleged acquisition and survival of a California company) than Israel would in whether Melman received a commission for his services for a California company. In addition, if litigation were to proceed in Israel, SLI would have to litigate there which would place a burden on it which renders the litigation burden obligation a neutral factor in determining specific jurisdiction.

The court does not find the exercise of specific jurisdiction to be unreasonable.

2. SLI Has Not Misused the Declaratory Judgment Act

Melman asserts that SLI's complaint should additionally be dismissed on the grounds that SLI has misused the Declaratory Judgment Act ("DJA") in the pursuit of its claims. The exercise of jurisdiction under the DJA is committed to the sound discretion of the federal district courts. 28 U.S.C. § 2201 ("In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of

any interested party seeking such declaration, whether or not further relief is or could be sought."). The discretionary factors to be evaluated include: (1) avoidance of needless determination of state law issues; (2) discouragement of forum shopping; and (3) avoidance of duplicative litigation. *See Government Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998).[2]

Although this case does not involve state law issues, it does raise the question as to whether Israeli or California law applies. Melman argues that under California 's choice of law rules that Israeli law applies because the alleged agreement was both made and to be performed in Israel. If he is correct that Israeli law applies, that would favor the Israeli forum because it would be better equipped to determine the applicable Israeli law. The court, however, does not find that Israeli law necessarily applies. Although based upon the briefing and the factual information presented, the court is not prepared to finally decide the issue at this point of whose law applies, it notes that the alleged agreement was accepted by Fried in California and Melman's alleged success in finding a company to acquire IA had a substantial impact on both IA and SLI in California.

Melman accuses SLI of forum shopping because it knew at the time it filed in California that Melman intended to file in Israel. It claims that SLI's suit was filed in an effort to preempt any suit filed by Melman in Israel. SLI's declaratory relief action was undoubtedly filed in part to try to insure that any dispute with Melman was tried in California. The court gives little weight to the fact that SLI filed first in California. On the other hand, SLI's filing was not in bad faith as SLI had been threatened with suit and was entitled to get the matter resolved. SLI has made appropriate use of the Declaratory Judgment Act.

3. The Doctrine of *Forum Non Conveniens*

Melman contends that SLI's case should be dismissed under the doctrine of *forum non conveniens*. "In a motion to dismiss on the ground of forum non conveniens, the burden of proving an alternative forum is the defendant's and . . . the remedy must be clear before the case will be dismissed. . . . Accordingly, appellee must prove the existence of an adequate alternative forum and

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[2] The court will not consider SLI's interference with prospective economic advantage claim in its analysis because that claim as it now stands fails to state a claim upon which relief may be granted. *See infra.*

that private and public interest factors favor dismissal." *Contact Lumber Co. v. P.T. Moges Shipping Co. Ltd.*, 918 F.2d 1446, 1449 (9th Cir. 1990) (Internal citations omitted).

The Israeli forum may be adequate alternative forum. The claim by Melman appears capable of being litigated in Israel, assuming the Israeli court found that it had jurisdiction over SLI. However, that does not dictate that the case should be dismissed in favor of the Israeli forum. The private and public interest factors do not favor dismissal of the instant litigation. Courts consider the following private interest factors:

> (1) the residence of the parties and the witnesses;
> (2) the forum's convenience to the litigants;
> (3) access to physical evidence and other sources of proof;
> (4) whether unwilling witnesses can be compelled to testify;
> (5) the cost of bringing witnesses to trial;
> (6) the enforceability of the judgment; and
> (7) all other practical problems that make trial of a case easy, expeditious and inexpensive.

Lueck v. Sundstrand Corp., 236 F.3d 1137, 1145 (9th Cir. 2001) (internal quotations omitted). Neither side has proved that these factors weigh in its favor.

In addition, courts consider the following public interest factors:

> (1) local interest of lawsuit;
> (2) the court's familiarity with governing law;
> (3) burden on local courts and juries;
> (4) congestion in the court; and
> (5) the costs of resolving a dispute unrelated to this forum.

Id. at 1147. The court does not find that the public interest factors weigh in favor of dismissal. If California law applies, the court here obviously is more familiar with the governing law.

The court denies Melman's motion to dismiss based upoon the doctrine of *forum non conveniens*.

B. SLI's Intentional Interference Claim Fails to State a Claim on Which Relief Can Be Granted

SLI's intentional interference claim fails to give Melman "fair notice" of the claim or more than labels and conclusions. It provides a mere "formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see* Fed. R. Civ. P. 8(a)(2). To state a claim for intentional interference with prospective business relations under California law, the plaintiff must set forth factual allegations supporting: (1) that it had an economic relationship

with a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant knew of the relationship; (3) the defendant acted intentionally to disrupt the relationship; (4) the relationship actually was disrupted; (5) plaintiff suffered economic harm, proximately caused by the defendant's actions; and (vi) the defendant's conduct was wrongful by some legal measure other than the fact of interference itself. *See Della Penna v. Toyota Motor Sales, U.S.A.*, 11 Cal. 4th 376, 380 fn 1 (1995). The assertion that Melman "disparaged" SLI is not adequate to show that Melman engaged in any conduct that was wrongful by some measure other than the alleged interference itself. The complaint fails to allege that Melman knowingly or recklessly made any specific false and injurious statements of fact. The court is left with the impression after reading the interference claim that SLI has no more than a suspicion that Melman may have acted wrongfully. The pleading is not sufficient to satisfy *Twombly* and Federal Rule of Civil Procedure 8(a)(2). Therefore, the motion to dismiss the interference claim is granted with twenty days leave to amend if SLI can do so meeting the requirements of Federal Rule of Civil Procedure 11.

III. ORDER

The motion to dismiss is denied except as to the request that the interference with prospective economic advantage claim be dismissed for the failure to state a claim upon which relief can be granted. As to that claim, the motion is granted. SLI is given twenty days leave to amend.

DATED: 07/09/09

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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Dated: 07/09/09

JAS
Chambers of Judge Whyte

United States District Court
For the Northern District of California